

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6130 of 1996

with

CIVIL APPLICATION No 8010 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHHOTUBHAI K PATEL

Versus

DISTRICT PRIMARY EDUCATION OFFICER

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Appearance:

1. Special Civil Application No. 6130 of 1996  
MR MTM HAKIM for Petitioner  
MR DC DAVE for Respondent No. 1  
SERVED for Respondent No. 2  
MR DA BAMBHANIA for Respondent No. 3
2. Civil Application No 8010 of 1996  
MR MTM HAKIM for Petitioner

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/11/96

## ORAL JUDGEMENT

Rule returnable today. Mr. DC Dave learned Advocate appears and waives service of rule on behalf of respondents nos. 1 and 2. Mr. Bambhania learned AGP waives service of rule on behalf of respondent no. 3.

The petitioner is a Primary Teacher, who pursuant to his request under order dated 22.7.1996 was transferred from Primary School Namchhadi, Tal. Dharampur to the Primary School, Kol Faliya Chanvai in Taluka Valsad. The said order of transfer having been made at the request of the petitioner, he was not entitled to the transfer allowance and joining time which would otherwise be admissible. Pursuant to the said order, the petitioner reported for duty at Primary School, Kol Faliya Chanvai. However, by an order dated 8th August, 1996, the above referred order dated 22nd July, 1996 was cancelled. It is this order dated 8th August, 1996 which is the subject matter of challenge in this petition.

It is the case of the petitioner that petitioner has served in Dharampur Taluka for as many as 10 years and he having been transferred at his own request, the said order of transfer could not have been cancelled. It is further contended that in the month of July, 1996 as many as 400 Primary Teachers were transferred within the district. However, only a few of them have been picked up and meted with the discriminatory treatment by cancelling the orders of transfer which were already implemented.

In response to the notice issued by this Court, the respondents have appeared through the learned advocate Mr. Dave and has contested the claim of the petitioner. The District Development Officer has made a counter affidavit. It is averred that the transfers of Primary Teachers pursuant to their request are required to be made in accordance with the instructions issued by the Director of Primary Education on 1st December, 1994. In view of the said instructions, while making transfer from one taluka to another, the teacher's services in the taluka where he or she is serving is required to be considered. However, in the present case, the petitioner's total service as primary teacher was taken into consideration while considering his request for transfer to Valsad taluka. This error has resulted into an undue advantage to the petitioner by placing his higher up in the list of priority of such request and has

resulted into an injustice to the other teachers who have made applications for transfer to Valsad taluka and have been waiting for their request being granted. It was in the aforesaid circumstances that the impugned order of transfer having been found erroneous and contrary to guidelines the same had to be cancelled. Be it noted that though the District Development Officer has stated that the petitioner has gained an undue advantage the extent of such advantage or the number of persons who are adversely affected by such advantage has not been disclosed in his affidavit. In the circumstances, it would be expedient that the whole matter be examined by the Director of Primary Education- respondent no. 3 herein. It is, therefore, directed that the petitioner shall make a representation to the Director of Primary Education in the subject matter of this petition. Such representation shall be made within a period of three weeks from today. The Director of Primary Education shall consider the representation made by the petitioner within a period of three weeks from the date of its receipt after calling for the detailed facts from the respondents nos. 1 and 2 herein. The decision that may be taken on such representation be communicated to the petitioner and that the same shall be binding on the petitioner. The petitioner shall be permitted to discharge his duties in the Primary School in Valsad Taluka till his representation is decided by the Director of Primary Education. The Director of Primary Education shall also decide the question of payment of salary for the period from the date of the impugned order till today.

I am distressed to note that the officer of the caliber of District Primary Education Officer shall be remiss in performing his duty while considering the request of the primary teachers for transfer. In the present case, the negligence or inadvertence shown by the District Primary Education Officer has resulted into an inconvenience and an avoidable expenditure to the petitioner. The recurrence of such kind of negligence casts doubt on the motive of the officers making such erroneous orders. It would, therefore, be expedient that Director of Primary Education shall take the matter into consideration and take necessary steps against the erring officer. Since the petitioner herein has been caused an avoidable inconvenience and expenditure, I consider it expedient to compensate him by awarding the costs of this petition. Earlier by order dated 24th October, 1996 made on Civil Application No. 9075 of 1996 the respondent no. 1 was directed to pay costs of the application to the petitioner which was quantified at Rs. 1000/-. I direct

that further amount of costs of this petition be paid to the petitoiner which is quantified at Rs. 1000/-. It shall be open for the respndents to recover the costs paid to the petitioner from the erring officer/officers.

In the result, this petition is allowed to the aforesaid extent. Rule is made absolute accordingly. D.S. is Permitted. No order on Civil Application.

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